SUPREME COURT OF THE UNITED STATES.

No. 259.

ANN PAYNE, COMPLAINANT AND APPELLANT,

vs.

ZADOC HOOK, WILLIAM CARRINGTON, *et al.*

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MISSOURI.

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1 MISSOURI DISTRICTS, *sct:*

Pleas before the honorable circuit court of the United States for the districts of Missouri, at April term, A. D. 1867.

ANN PAYNE, complainant,
agst.
ZADOC HOOK, WILLIAM CARRINGTON, SAMUEL Watson, Monroe Sampson, Sam'l A. Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John Baker, William J. Bedsworth, Henry Sarimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neal, John A. Adkins, John West, Thomas J. Baker, and Martin Baker, defendants. } In chancery.

Be it remembered, that on the twenty-fifth day of January, A. D. eighteen hundred and sixty-seven, the complainant, by her solicitors, filed in the office of clerk of circuit court of the United States for the districts of Missouri, her bill in chancery against said defendants, and upon which the following order was made:

Bill in chancery filed.

ANN PAYNE, complainant,
against
ZADOC HOOK *et al*, defendants. } In chancery.

Order for subpoena to be issued.

2 This day comes the complainant, by Messrs. Glover and Shepley, her solicitors, and files her bill in chancery against the said defendants in this cause, and on the motion of said solicitors it is ordered that a subpœna in chancery be issued in said cause, returnable to rules on the first Monday, the first day of April next.

And said bill in chancery, filed by said complainant on said twenty-fifth day of January, A. D. eighteen hundred and sixty-seven, is in the words and figures following, to wit:

Bill of complaint.

To the judges of the circuit court of the United States for the districts of Missouri, in chancery sitting:

Ann Payne, a citizen of the State of Virginia, brings this her bill against Zadoc Hook, William Carrington, Samuel Watson, Monroe Sampson, Samuel A. Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John West, Thomas J. Baker, Martin Baker, John Baker, William J. Bedsworth, Henry Sarimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neal, and John

A. Adkins, all of Callaway county, and citizens of Missouri; and thereupon said Ann Payne complains and says her brother, Fielding Curtis, departed this life, at his residence in Callaway county, Mo., in Feb'y, 1861; that said Fielding never married, left no lineal descendants, father or mother, living at the time of his death; that the estate which he possessed at his death, so far as known, consisted wholly of personality; that at his death his
3 next of kin, entitled to distribution of his estate, were the following, to wit:

(1) Ann C. Burnham, wife of David M. Burnham, and Virginia W. Sappington, wife of Wm. J. Sappington, said Ann and Virginia being only children of Wm. Curtis, a brother of said Fielding Curtis, he, said William, having departed life prior to the death of said Fielding Curtis. (2.) Abraham Curtis, a brother of said Fielding, who departed life in the summer of 1866. (3.) Susan Curtis, a widowed sister of said Fielding Curtis. (4.) The children of Elizabeth Guion, a widowed sister of said Fielding Curtis, who departed life before said Fielding. (5.) The children of Elijah Curtis, a brother of said Fielding, who departed life before said Fielding Curtis. (6.) The children Sarah Wilhoite, a sister of said Fielding Curtis, who departed life prior to said Fielding, (7.) Mary Guiner, a widowed sister of said Fielding. (8.) Your complainant, Ann Payne, a widowed sister of said Fielding, and that complainant was and is entitled to one-eighth part undivided of said personal estate of Fielding Curtis, deceased.

That said Fielding Curtis's estate, at the time of his decease, consisted of money, bank notes, individual promissory notes, bonds, bills and obligations for debts and liabilities due to him from sundry persons, slaves, and some other articles of property not exceeding one hundred dollars ($100) in value.

4 That the whole amount of available assets of said estate, including interest on money due said *said* Fielding at his death, amounted to not less than eighty thousand dollars. That said Zadoc Hook was public administrator of the county of Callaway, and on the eighteenth day of March, 1861, by order of the county court of Callaway, took into his charge as such the administration of said Fielding Curtis' estate. In the same month and year, said Hook, administrator as aforesaid, returned his inventory of said decedant's estate, amounting only to the sum of 66.538 dollars, exclusive of the slaves belonging to said estate; that said slaves were worth not less than five thousand dollars.

May 20th, 1862, said Hook, as such administrator, made his first annual settlement, showing a balance on his hands of that date amounting to the sum of 69,612 68-100 dollars. In May, 1863, said Hook, as such administrator, made his second annual settlement, showing a balance then in his hand of 65,184 96-100 dollars. In May, 1864, said Hook, as such administrator, made his third annual settlement, showing a balance then on his hands amounting to 64,542 09-100 dollars. In May, 1865, said Hook, as such administrator made his fourth annual settlement, showing a balance then on his

hands amounting to the sum 63,586 76-100 dollars, which was
5 and is the last settlement of his accounts as such administrator, which said Hook has made with the Callaway county court, and ever since said Hook has failed and neglected to take any other further steps towards the administration and settlement of said estate; which said several settlements will be produced and shown to the court as part of the proceedings in said administration of record in the office of the clerk of said county court.

The complainant states that said settlements of said administrator Hook were false and fraudulent, as follows: that there were in the hands of said administrator, Hook, more than fifteen thousand dollars of assets belonging to said Fielding Curtis' estate, consisting of money, gold and silver, bonds and notes and obligations calling for money, the property of said Fielding at his death, which came to the hands of said administrator and remained in his hands, and the proceeds and value of which are now in his hands, and which he failed to inventory or account for in his administration of said estate.

That in the first annual settlement of said administrator he failed and refused fraudulently, to account for, or charge himself, with a large amount of money, to wit: twenty thousand dollars belonging to said decedant's estate, which he received for interest on money of said estate, and which has ever since remained in his hands
6 unaccounted for; nor did he in any other settlement, or in any way charge himself with, or account for, said last-mentioned sum of money. That in said second annual settlement he, said administrator, failed and refused to account for, or charge himself with another large sum of money, to wit: twenty thousand dollars belonging to said estate of said decedant, for interest received by him, or money belonging to said estate, and which has ever since remained in his hands unaccounted; nor did he in any other settlement, or in any way charge himself with said last-mentioned sum of money, or account for the same. That in his third annual settlement he failed and refused to account for, or charge himself with another large amount of money belonging to said estate, for interest received by him on moneys of said estate, viz: twenty thousand dollars; nor did he in any other settlement, or in any way charge himself with, or account for the same. In his fourth annual settlement said Hook, as such administrator, failed and refused to charge himself with, or account for another large sum of money belonging to said estate, on account of interest received by him on money of said estate, viz: twenty thousand dollars, all of which said sums of money have remained in the hands of said administrator, and still remain in his hands unaccounted for. That said administrator received ten per cent. on all the notes, bonds, and obligations belonging to said estate, up to the time when the same were collected by him in the course of administration. That he collected a small portion of said
7 bonds, notes, and obligations, say not over ten thousand dollars, prior to September 24th, 1862. That afterwards he collected and received the residue of said notes, bonds, obligations, and assets belonging to said estate. That said administrator employed

and used the funds of said estate in his hands for his private gain in every way he could in trade, speculation, in buying and selling gold coin, in shaving paper, in loaning the same at high, and even usurious interest; that he never received less than ten per cent. interest on all the money in his hands; and for a great part of it he received interest at the rate of twelve, fifteen, twenty, and twenty-five per cent. per annum. That for such purposes the said Hook sent to St. Louis the money of said estate in his hands as such administrator, and kept it there in order to so use it, and did so use it in speculations for his own personal benefit. That each and every entry in his several settlements, by which he credits the said estate with interest on the money in his hands at the rate of six per cent. only, is false and fraudulent; that his failure to charge himself with at least ten per cent. interest per annum on all the moneys in his hands was, and is, fraudulent. That his failure to account for more than ten per cent. interest on nine-tenths of said moneys was, and is, fraudulent; that the charge against himself, as administrator, in his third annual settlement of 1,460 dollars interest received, is false and fraudulent for being less than the amount of interest
8 which ought to have been charged against him; that the charge against himself in his fourth annual settlement of 540 dollars for "interest received" was, and is, false and fraudulent for being less than the amount of interest which ought to have been charged against him in that behalf.

Your complainant states that the following items of credit to said administrator, in his several settlements aforementioned, were illegal and fraudulent, viz: the item 4,341 65-100 dollars paid to David M. Burnham and wife, the item 397 96-100 dollars for interest thereon; the item 1,214 47-100 dollars paid to William J. Sappington and wife, the item 83 03-100 dollars interest thereon; the item 1,100 dollars paid to William J. Sappington and wife, the item of 10 08-100 dollars interest thereon; the item 180 70-100 dollars paid William J. Sappington and wife, the item 6 50-100 dollars interest thereon; the item 111 08-100 dollars paid William J. Sappington and wife, the item 5 25-100 dollars interest thereon; the item 57 26-100 dollars paid William J. Sappington and wife, the item 3 15-100 dollars interest thereon; the item 261 88-100 dollars paid William J. Sappington and wife, the item 37 30-100 dollars interest thereon; the item 16 76-100 dollars for interest in his third annual settlement, and the item of 5 10-100 dollars for interest in his second annual settlement.

Your complainant does not deny, but, on the contrary, says it is true that said administrator did pay Burnham and wife, and Sappington and wife, said several sums of money; but she insists
9 that said county court of Callaway county had no power, authority, or jurisdiction to allow or credit to said administrator any one of them in said settlements.

Your complainant states that each and every credit allowed to said administrator for commissions, is false and fraudulent, as follows, viz: 33 20-100 dollars, 66 79-100 dollars, 40 31-100 dollars, 26

24-100 dollars, 43 58-100 dollars, because no trustee who is unfaithful to his trust, and guilty of bad faith, can receive any compensation for services.

Your complainant further shows to the court that on the 24th day of September, 1862, said Zadoc Hook, as the public administrator of Callaway county aforesaid, executed and delivered to the State of Missouri his bond, whereby he, as principal, and William Carrington, Samuel Watson, Monroe Sampson, Samuel A. Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John West, Martin Baker, John Baker, Thomas J. Baker, William J. Bedsworth, Henry Sarimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neil, and John A. Adkins, as his sureties, acknowledged themselves held and firmly bound unto the State of Missouri in the penal sum of one hundred and ninety thousand dollars, for payment of which, well and truly to be made, they bound themselves, heirs, &c., jointly and severally and firmly, under their respective hands and seals, a copy of which bond is now here shown to the court, the original being on file in the office of the clerk
10 of the said county court, by which it will appear that said bond was conditioned as follows: That, whereas the county court of said county of Callaway did, on the 17th day of September, 1862, make an order requiring said Zadoc Hook, as public administrator of said county, to give additional bond and security. It was provided by said bond, if said Zadoc Hook should well and faithfully discharge all the duties of his office as such public administrator, then said bond to be void, else remain in full force; and complainant saith that by means thereof the said principal and securities became and were bound, and undertook, and agreed with the complainant that the said Hook should administer and settle up the estate of said Fielding Curtis, and distribute the same, after payment of debts, among the parties entitled thereto; that all debts and liabilities of said estate have long since been paid off by said administrator; that, although the said Zadoc Hook, on the 24th of Sept., 1862, had in his hands all the effects and assets of said estate, and the whole distributable share to which your complainant is entitled, he has not, and will not account for, nor pay the same to her; but, on the contrary, has been guilty of gross fraud and duplicity in respect thereto; that, owning to the want of communication between the place of the complainant's residence and Callaway county, Missouri, growing out of the late civil war, complainant was totally ignorant of the value of the estate of Fielding Curtis, deceased, as late as the 19th day
11 of June, 1865; that about that time she received from said Hook the only information she possessed in reference thereto; that said Hook was kind enough to make a trip all the way to Culpepper county, Virginia, to communicate said information, which was as follows: That he, Hook, was the legal administrator of Fielding Curtis; that he had died in February, 1861; that the precise amount of her share in said estate could not then be ascertained, owning to the uncertainty of collecting money, notes, and evidences of debts due said estate; that he, Hook, out of his very great kind-

ness for her, was willing to pay to her, on account of her interest in said estate, the sum of five thousand dollars, which he, Hook, said was twelve hundred dollars over and above her share of all the available and undoubted assets of the estate, including money and notes; that the real actual value of her interest was about thirty-eight hundred dollars, and he, said Hook, proposed that, inasmuch as he was so generous, if it should be that he could not collect for her share five thousand dollars of the assets, she ought to refund as much of said sum of five thousand dollars as he should not realize above the thirty-eight hundred dollars; and said Hook also said that he would not hold her bound to refund to him longer than five years; for, if he could not close the outstanding claims in five years, he would not claim the refunding bond.

Your complainant states that she can neither read or write, and had no experience in transacting any legal business, and con-
12 fidently relied on the representations of said Hook; that she received from him the said sum of five thousand dollars, and made her mark on a paper which he requested her to sign, which paper is dated June 19th, 1865, and will be produced, and shown to the court.

Your complainant states that she is informed and believes that said paper was drawn by Hook's own attorney, whom he retained in Missouri to accompany him to Culpepper, Virginia, to assist him with legal advice in paying to your complainant 1,200 dollars more than he said was her due, and prevent your complainant from taking advantage of him.

Complainant regrets to have to state that all the aforesaid representations of said Hook touching the condition of said estate, its value, and the amount of her share therein, were each and every one of them false and fraudulent. She says that said paper, dated June 19th, 1865, was obtained from her by fraud, covin, and misrepresentation on part of said Hook, and without consideration. That, a short time afterwards, said Hook represented to your complainant that, although the five thousand dollars was more than her interest in said estate, yet if she would, in consideration of that sum already paid to her, assign to him any remaining interest of hers in said estate, he would give up her refunding bond.

Impressed with the belief that said Hook was telling the truth, and regarding the proposition as generous on his part, your
13 complainant, without any new consideration, signed her mark to a paper which said Hook presented her, and which he told her was a transfer to him of any remaining interest she might have in said estate, and received back from him the aforesaid refunding bond dated June 19th, 1865.

Your complainant states that said last-mentioned paper, which she signed when she got back said refunding bond, the date of which she is unable to give, was obtained from her by fraud, covin, and misrepresentation on the part of said Hook, and without consideration.

Your complainant is informed and believes that he, said Hook, has

paid to the distributees of said Fielding Curtis, deceased, including the five thousand dollars paid to her, about thirty-five thousand dollars, and proposes to retain all the residue of said estate in his hands, not less than seventy or eighty thousand dollars, by means of the fraudulent devices aforesaid. That in November, 1861, said Hook, as the complainant is informed, and believes, and charges, paid to David M. Burnham, and Ann, his wife, 4,341 65-100 dollars, in part of the share of said Ann, whose distributable interest was only the half of one-eighth thereof.

Your complainant prays that said Zadoc Hook, William Carrington, Samuel Watson, Munroe Sampson, Samuel A. Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John West, Martin Baker, John Baker, Thomas J. Baker, William J. Bedsworth, Henry Sarimore, Joseph Fisher, William Trimble, Elisha
14 H. Blackwell, Jeremiah N. B. Neil, and John A. Adkins, be made defendants to her bill; that a subpœna in chancery may go against them as such; that they may answer this bill, but without oath; that the transfer of complainant's interest in the estate of said decedant to the defendant, Hook, may be cancelled; that defendants shall account for all property and effects, principal and interest, which came to the hands of said Hook as administrator aforesaid; that all credits falsely and fraudulently allowed, as aforesaid, may be disallowed; that said settlements with the county court may be restated and corrected; that a decree may be made in favor of complainant for one-eighth part of all the estate of said decedant remaining unaccounted for in the hands of said administrator, and that complainant may have general relief, &c.

(Signed) GLOVER & SHEPLEY,
Solicitors for Ann Payne.

And on the twenty-eight day of January, in said year eighteen hundred and sixty-seven, there was issued out of the clerk's office of this court a subpœna in the usual form, according to the rules and practice of this court, which subpœna is in the words and figures following, to wit:

Subpœna.

MISSOURI DISTRICT, *sct:*

The President of the United States to Zadock Hook, William Carrington, Samuel Watson, Monroe Sampson, Samuel A. Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John Baker, William J. Bedsworth, Henry Sarimore, Joseph Fisher,
15 William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neil, John A. Adkins, John West, Thomas J. Baker, and Martin Baker, greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the districts of Missouri, on the first Monday of April next, at the city of St. Louis, then and there to answer the bill of complaint of

Ann Payne, a citizen of the State of Virginia, filed against you on the 25th day of January, 1867. Hereof fail not.

Witness, the Honorable Salmon P. Chase, Chief Justice of the United States, the 28th day of January, 1867. Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

(Signed) BEN. F. HICKMAN, *Clerk.* [SEAL.]

[50c. int. rev. stamp.]

Memo.—The defendants to enter their appearance in this suit in the clerk's office, on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

(Signed) BEN. F. HICKMAN, *Clerk.*

And the return on said subpœna is in the words and figures following, to wit:

Return of marshal on subpœna.

I certify that I executed the within writ by delivering a true copy of the declaration [bill] and summons on the within named Zadock Hook, and by delivering a true copy of the within summons, and by reading a true copy of the said bill to the within named William Trimble, and John West, and I further certify that I executed the within summons on the within Samuel A. Trimble, by delivering a true copy of the within summons at his usual place of abode, to a white person of his family over the age of fifteen years, on
16 the 4th day of March, 1867; and I further certify that I executed the within summons on the within named Isaac F. Crons, Alvon West, William J. Bedsworth, Martin Baker, Thomas J. Baker, John Baker, and Monroe Sampson, by delivering each of them a true copy of the within summons, and by reading to each of them a true copy of the within bill on the 5th day of March, 1867. I further certify that I executed the within summons on the within named Thomas H. Beeding, James A. Comer, Samuel Watson, William Carrington, Jeremiah N. B. Neil, Henry Sarimore, and Joseph Fisher, by delivering to each of them a true copy of the within summons, and by reading to each of them a true copy of the within bill on the 6th day of March, 1867. I further certify that I executed the within summons on the within named William Blackwell, by delivering a true copy of of the within summons at his usual place of abode, to a white person of his family over the age of fifteen years, on the 6th day of March, 1867. I further certify that I executed the within summons on the within named John A. Adkins, by delivering a true copy of the within summons at his usual place of abode, to a white person of his family over the age of fifteen years, on the 6th day of March, 1867. All done in Callaway county, and the State of Missouri, and in the western district of Missouri.

(Signed) THOMAS B. WALLACE,
U. S. Marshal for the Western District of Mo.
By PETER MYERS,
U. S. Deputy Marshal.

And on the first day of April, A. D. eighteen hundred and sixty-seven, the following further proceeding, took place in this cause, to wit:

Demurrer filed.

ANN PAYNE, complainant, *agst.* ZADOC HOOK, *et al*, defendants. } In chancery.

17 This day come the defendant Zadock Hook, and all the parties legally served with process, by Thomas T. Gantt, and William B. Napton, esquires, their solicitors, and file their demurrer to the bill of complaint heretofore filed in this cause.

And said demurrer filed on said first day of April, A. D. eighteen hundred and sixty-seven, is in the words and figures following, to wit:

Demurrer of Defendants.

In the United States circuit court for the districts of Missouri, April term, 1867.

ANN PAYNE, complainant, *vs.* ZADOK HOOK, WILLIAM COVINGTON & OTHERS, defendants. } In chancery.

The demurrer of Zadok Hook and all the parties to the bill of complaint in this cause. These defendants by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, do demur in law to the said bill and for a cause of demurrer do show that the said complainant hath not by her said bill made such a case as entitles her in a court of equity to any discovery or relief from or against these defendants touching the matters contained in the said bill, or any of such matters. Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, these defendants do demur to the said bill and to all the matters and things therein contained, and pray the judgment of this honorable court
18 whether they shall be compelled to make any further or other answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed) WM. B. NAPTON,
THOMAS T. GANTT,
Solicitors for Defendants.

We certify that in our opinion the aforegoing demurrer is well founded in point of law.

(Signed) W. B. NAPTON,
THOS. T. GANTT,
Solicitors for Defendants.

Zadok Hook, defendant, being duly sworn says, on his oath, that the foregoing demurrer is not interposed for delay.

(Signed) ZADOK HOOK.

Sworn to and subscribed before me a notary public within and for Callaway county, Missouri, this twenty-eighth day of March, 1867.

(Signed) JAS. C. RENSHAW, [SEAL.]
Notary Public.

[5 ct. int. rev. stamp.]

And on the 5th day of April, in said last-named year, the following further proceedings took place in this cause, to wit:

Replication filed.

ANN PAYNE, complainant,
ag'st.
ZADOC HOOK, *et al*, defendants. } In chancery.

This day come the parties, by solicitors, and the said complainant, by solicitor, files her replication to the demurrer of said defendants to the bill of said complainant filed herein on the first day of the present term. And the questions of law arising upon the said demurrer were thereupon set for hearing instanter by consent, and the same were then heard and submitted to the court, and the court not being fully advised in the premises took time to consider
19 of its decision thereon.

And said replication to demurrer filed on the fifth day of April, A. D. eighteen hundred and sixty-seven, is in the words and figures following, to wit:

Replication of Plaintiff.

In cir. court, U. States dist. Mo., April T., 1867.

ANN PAYNE
vs.
ZADOK HOOK & OTHERS.

And now at this comes the plaintiff and for replication to the demurrer filed herein say the bill of the *bill of the* complainant and the matters and things contained there are good and *and* sufficient, and of this she prays the judgment of the court.

(Signed) GLOVER & SHEPLEY,
for Complainant.

And on the sixth day of April, A. D. eighteen hundred and sixty-seven, at said term aforesaid, the following further proceedings took place in this cause, to wit:

ANN PAYNE, complainant,
ag'st
ZADOCK HOOK *et al*, defendants. } In chancery.

This day come again the parties, by solicitors, and the court having examined the questions of law arising upon the demurrer of said

defendants to the bill of complainants heretofore filed herein, and being advised of and concerning the same, is of opinion that the law is for the defendants upon such demurrer, and in accordance with such opinion now orders that the said demurrer be and the same is hereby sustained.

Leave to amend bill.

And thereupon, on motion of solicitors for complainant, it is ordered that said complainant have leave to amend her bill herein, on or before the first Monday of June next.

20 And on the fifteenth day of April, at said term and in said last mentioned year, the following further proceedings took place in this cause, to wit:

Order for continuance.

ANN PAYNE, complainant,
ag'st
ZADOCK HOOK *et al*, defendants. } In chancery.

Ordered, that this cause be now continued until the next term of this court.

And on the sixteenth day of April, in said term, in the year eighteen hundred and sixty-seven, the following further proceedings were had, to wit:

Continuance set aside.

ANN PAYNE, complainant,
ag'st
ZADOCK HOOK *et al*, defendants. } In chancery.

This day come the parties by their respective solicitors, and by consent, it is ordered that the continuance entered in this cause on yesterday be and the same is hereby set aside.

Leave to amend bill set aside.

And on motion of solicitor for complainant, it is further ordered that the leave heretofore granted to the said complainant to amend the bill herein on or before the first Monday of June next, be and the same is hereby set aside. And the complainant, by her solicitor, not asking further to amend the said bill filed by her herein and saying that she will abide the decision of the court as rendered upon the questions of law arising upon the demurrer of the defendants heretofore sustained herein.

Complaint dismissed.

It is, therefore, now finally ordered, adjudged, and decreed, that in accordance with the decision of the court upon the demurrer filed herein by defendants to the bill of said complainant, that the

21 said bill of complainant be and the same is hereby dismissed,

and that the said complainant pay the costs of this suit, and that execution or a fee bill be issued for such costs.

Appeal prayed for and granted.

And thereupon, the said complainant, by her solicitor, prays an appeal in this cause from the decree rendered herein to the Supreme Court of the United States, which is allowed, and said appeal now ordered.

Bond presented and approved.

And the said complainant, by solicitor, thereupon presents to the court the bond of said appellant herein, signed by Samuel T. Glover, as principal, and Thomas T. Gantt, as surety, which said bond is approved by the court.

And the said bond, filed on the sixteenth day of April, eighteen hundred and sixty-seven, is in the words and figures following, to wit:

Bond of appellant.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri.

ANN PAYNE, complainant,
ag'st
ZADOC HOOK *et al*, defendants. } In chancery and on appeal.

Know all men by these presents, that we, Samuel T. Glover, as principal, and Thomas T. Gantt, as surety, are held and firmly bound unto Zadoc Hook, William Carrington, Samuel Watson, Monroe Sampson, John West, Thomas J. Baker, Martin Baker, Samuel A.
22 Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John Baker, William J. Bedsworth, Henry Sarimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neil, and John A. Adkins, in the sum of five hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 16th day of April, A. D. 1867.

Whereas, the complainant in the above-entitled cause has prayed for and been allowed an appeal to the Supreme Court of the United States to reverse the decree rendered in said cause by the circuit court of the United States for the districts of Missouri, at the April term, A. D. 1867, of said circuit court:

Now, therefore, the condition of the obligation is such, that if the above-named Ann Payne, her heirs, executors, and administrators, shall well and truly prosecute said appeal to effect, and answer all damages and costs, if she shall fail to make good her plea, then this

obligation shall be void, otherwise the same shall remain in full force and virtue.

(Signed) SAMUEL T. GLOVER. [SEAL.]
(Signed) THOS. T. GANTT. [SEAL.]

Signed, sealed and acknowledged severally by said Samuel T. Glover, and Thomas T. Gantt, before me, this 16th day of April, A. D. eighteen hundred and sixty-seven.

(Signed) BEN. F. HICKMAN,
Clerk U. S. Circuit Court, Districts of Missouri.

23 UNITED STATES OF AMERICA,
Circuit court for the districts of Missouri, ss:

I, Benjamin F. Hickman, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be copy of the record and proceedings in chancery cause in said court, of Ann Payne, complainant, *ag'st* Zadoc Hook, William Carrington, Samuel Watson, Monroe Sampson, A. Trimble, Isaac F. Coons, John A. Comer, Alvon West, Thomas H. Beeding, John Baker, William A. Bedsworth, Henry Sarimore, Joseph Fisher, William Trimble, Elisha H. Blackwell, Jeremiah N. B. Neal, John A. Adkins, John West, Thomas J. Baker, and Martin Baker, defendants, as fully as the same remain on file and of record in said case, in my office.

In witness whereof, I hereunto subscribe my name, and affix the seal of said court, at office in the city of St. Louis, in said districts, this twenty-sixth day of April, in the year of our Lord eighteen hundred and sixty-seven.

[SEAL.] BEN. F. HICKMAN,
Clerk of said Court.

[U. S. 5-cent int. rev. stamp.]

Endorsed: United States circuit court, districts of Missouri. Ann Payne *against* Zadock Hook *et als.* Duly certified copy of the record and proceedings in chancery in the above-entitled cause.

In Supreme Court of the United States.

DECEMBER TERM, A. D. 1868.

ANN PAYNE, *Complainant and Appellant,*

v.

ZADOC HOOK. WM. CARRINGTON, *and others.*

STATEMENT FOR COMPLAINANT AND APPELLANT.

In Supreme Court of the United States.

DECEMBER TERM, A. D. 1868.

ANN PAYNE, *Complainant and Appellant,*

v.

ZADOC HOOK, WM. CARRINGTON, *and others.*

STATEMENT FOR COMPLAINANT AND APPELLANT.

Ann Payne, a citizen of Virginia, exhibited her bill against Zadoc Hook, public administrator of Callaway county, Missouri, and his sureties on his official bond, in the Circuit Court for the Missouri districts, all defendants being citizens of Missouri, to recover her distributable share of the estate of Fielding Curtis, deceased, late of said county. The Circuit Court sustained a demurrer to the bill, which may be read from the record, and cannot be shortened by a statement.

The demurrer was general, mentioning no specific reason why the bill was deemed insufficient.

In the argument of the demurrer, it was insisted that the Circuit Court of the United States had no jurisdiction of the cause; that the principal, Zadoc Hook, could not be jointly sued with his securities; and that the bill was multifarious.

POINTS AND AUTHORITIES BY GLOVER & SHEPLEY, FOR APPELLANT.

1. The Circuit Court had jurisdiction of the case made by the bill. The complainant was a citizen of Virginia, and all the defendants were citizens of Missouri. The bill showed a matter of legal controversy. These facts were

sufficient to maintain the jurisdiction of the Federal Court. "The judicial power of the United States shall extend * * * * to *controversies* between *citizens of different States*."—Art. iii, Const., § 2.

There is no exception here whatever. And there is no reason why a distributee or legatee should not demand his rights against an administrator or executor in the Federal Court. The purpose of the constitutional provision was to furnish the citizen of one State a more impartial tribunal than might be found in another State of which the party sued was a citizen. If the complainant had sued a mere individual citizen of Missouri, the jurisdiction would not be denied; but when she sues a citizen who is a defaulting official of the State, it is denied. But it seems to us there is greater reason, if possible, for maintaining the jurisdiction in the case of the officer. Should a State pass laws denying to citizens of other States "the immunities and privileges" granted to its own citizens, these laws would have to be executed by officers; and it would never do to exempt them from actions in the Federal courts.—3 Story on Const., 562, §§ 1684, 1685.

There is nothing in the adjudications of this court to show that such an action will not lie in the United States courts. That this jurisdiction has been constantly maintained, see Troy et al. v. Belt et al., 1 Peters, 670; Childress v. Emory, 8 Wheat. 642; Boyce's Ex'rs. v. Grundy, 9 Peters, 275; Edmonds v. Crenshaw, 14 Peters, 166. The executor received the assets of the estate, in amount some sixteen thousand dollars, failed to settle his accounts with the Probate Court or invest the money as required by the will, and the bill was sustained against him in the Federal court.—In Suydam v. Brodnox, 14 Peters, 74, a law of Alabama which prohibited a suit against an administrator or executor, in case an estate was declared insolvent, was held unconstitutional in respect to the United States courts. Patton v. Page, 5 Peters, 304; Union Bank v. Jolly, 18 How. 502—were to the same effect. A suit was commenced in the Fed-

eral Circuit Court of Mississippi, defendant pleaded and died, and the suit was revived against his administrator. A State law required every creditor to establish his claim in the Probate Court by certain steps, with which the plaintiff in the Federal court did not comply, but prosecuted his suit to judgment there. It was held that though a State might require its own citizens to comply with such laws, they could not affect citizens of other States suing in the Federal courts. That to give such effect to the State laws would concede to a State the power to limit the jurisdiction of the courts of the United States. See also Bacon v. Robertson, 18 How. 480; Michoud v. Girod, 4 How. 550; Apsden et al. v. Nixon et al., 4 How. 467; Hill v. Tucker, 13 How. 458; Fornergne v. City of New Orleans, 18 How. 471; Hogan v. Walker et al., 14 How. 29. While the case was unquestionably within the letter of the grant of jurisdiction, no reason has been suggested why a suit against an administrator should be excepted. It is not pretended that any legal right of the administrator could not be insisted on in the Federal court, or that that court would not be bound to administer the law of Missouri in his behalf—4 How. 478. In Hyde v. Stone, 20 How. 170, it was held that "the jurisdiction of the courts of the United States over controversies between citizens of different States cannot be impaired by the laws of the States which prescribe the modes of redress in these courts, or which regulate the distribution of their judicial power." The doctrine in Fenwick vs. Sears, Adm'r. 1 Cranch, 259; Dixon's Ex'r. v. Ramsay's Ex'rs., 3 Cranch, 319; Story's Conflict, § 513; Vaughn et al. v. Northup, 15 Peters (1), has no application here. The complainant sues the admin'r. in the State where his letters are granted, and calls on him to account, after payment of all debts, according to the local laws and in a court of concurrent jurisdiction with the State courts. The Circuit Court of the United States ,though not called a court of Missouri, does *pro hac vice* fill the place of a State court. The people of Missouri, by assenting to the Federal Constitution, have made the Federal

Circuit Court a substitute for the State court in such cases, at the election of the complainant. Any other construction would force the complainant into the County Court of Callaway county, that court by the State law having exclusive jurisdiction of "all disputes respecting the duties or accounts of executors, administrators, or guardians"—R. S. 1865, p. 556, § 7—subject to an appeal to the State Circuit Court.

There is no conflict of action with the State courts in this case, as there was in Williams v. Benedict, 8 How. 111, where the plaintiff sought to fix a lien on property that the State court was about to sell. The State court does nothing. The administration commenced March, 1861. The estate ought to have been settled in three years at most—R. S. 1865, p. 490, § 19; State v. Stephenson Distribution, 12 Mo. p. 507—but no steps have been taken to that end; the debts of deceased are all paid, and the complainant only asks her distributive share of the estate, a question yet not touched by the State court. She does not wish to try her cause in the Callaway County Court, where twenty defendants reside, many of them persons of great wealth and influence.

2. The sureties were proper parties—Bush v. Hampton, 4 Dana, 85; Blackberry, Exr. v. Halton, 5 Dana, 521; Carrol v. Connett, 2 J. J. Marsh, 198; Alexander v. Mercer, 7 Geo. 449; Clark v. Shelton, 16 Ark., 474.; Brooks v. Gibbons, 4 Paige, 374; Spottswood v. Dandridge, 4 Munford, 296; Moore v. Waller's heirs, 1 A. K. Marsh, 481.

It was conceded on the argument in the Circuit Court that an action at law on the administrator's bond would have lain well enough. By the last case cited, that was only cumulative.

3. It is not necessary in Missouri to obtain judgment against the administrator before proceeding against the sureties—Oldham v. Trimble, 15 Mo. 225; Gov. use of Hill, &c., v. Chouteau, 1 Mo. R. 731.

4. The sureties on the bond of the public administrator are liable to the complainant for all moneys in his hands belonging to the estate of Curtis at the date of the bond and

not afterwards duly accounted for—Gottsberger v. Taylor, 19 N. Y. 150; Bates v. The State, 15 Ind. 321; Farrar & Brown v. United States, 5 Peters, 389. The court may demand additional security of a public administrator—1 R. S. 1855, p. 176, § 2. For effect of additional bond, see 1 R. S. 1855, p. 120, § (2) 9. Hook, as administrator, was not bound to pay over to distributees till two years from the date of letters, in any event.

5. The bill is not multifarious. It demands relief only on one cause of action, and all the defendants are jointly interested in it. That cause of action is complainant's right to a share in the estate of Fielding Curtis. The charging part of the bill suggests a defence that may be set up, and proceeds to show why it is no defence; but this is only in aid of the single cause of action the bill contains. This a very common form of bill. The fraudulent receipt and transfer asked to be cancelled constitute no new cause of action—See Michoud v. Gerod, 4 How. 564, where "fraudulent acquittances" were set aside; Story Eq. Pl., p. 300, § 284, p. 303, § 287; Gaines and wife v. Chew, 2 How., 619.

Hunt & Wadsley

In Supreme Court of the United States.

DECEMBER TERM, 1868.

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PAYNE,
v.
HOOK and others.

On appeal from the Circuit Court of the United States for the District of Missouri

WM. B. NAPTON, for Appellees.

In Supreme Court of the United States.

DECEMBER TERM, 1868.

(*No. 113.*)

PAYNE, *v.* HOOK and others. } *On appeal from the Circuit Court of the United States for the District of Mo.*

STATEMENT.

The appellant, a citizen of Virginia, filed her bill in Chancery, in the Circuit Court, against Zadok Hook, Public Administrator of Callaway county, and administrator of the estate of Fielding Curtis, deceased, and the securities on his official bond. The bill contains but four charges, upon which relief is asked:

1. That $15,000 of the assets was not inventoried.

2. That in his annual settlements Hook failed to charge himself with interest actually received by him, amounting to large sums specified in the bill.

3. That in said settlements he obtained various items of credit which ought not to have been allowed.

4. That he bought complainant's (one of the heirs) interest in the estate by fraudulent representations, and all these acts are averred to have been done by Hook fraudulently.

It is stated that Hook has not yet made his final settlement.

The prayer of the bill is for a rescission of said purchase; for overhauling said accounts, inventories, etc.; for correcting said settlements (annual), and for general relief.

To this bill defendant demurred, and the court sustained the demurrer, and, the complainant declining to amend, the bill was dismissed, and the case is brought here by appeal. In support of the judgment of the Circuit Court the defendant submits the following

POINTS AND AUTHORITIES.

1. The Circuit Court of Callaway county, having the State Chancery jurisdiction, now invoked in the Federal court because of the non-residence of the complainant in Missouri, had no power under the laws of Missouri, and the adjudications expounding those laws, to grant the relief asked. The power of our Chancery courts begins after a final settlement. Our probate system differs from that of most of the States, and certainly vastly from the English system. Its jurisdiction is exclusive, except in certain specified instances, carefully enumerated in the statute, and this case is not one of them. Therefore, it has been determined, by a long series of adjudications in Missouri, that a court of chancery, or a court having equity jurisdiction, can not exercise the power or grant the relief asked in this case until the jurisdiction of the Probate Court is exhausted, or the final settlement, or, perhaps, where the death of the administrator has rendered a final settlement impossible, and the suit has been brought by the administrator *de bonis non.* — Miller v. Woodward & Thornton, 8 Mo. R. 169; Clark and wife v. Henry, adm'r, 9 Mo. R. 340; Overton v. McFarland, 15 Mo. R. 312; Picot v. Biddle, 35 Mo. R. 29. There are numerous other cases, but they will be found referred to and reviewed in the two last cases cited. In the case of Overton v. McFarland, which was a bill in equity, substantially identical with the present in principle, Judge Gamble says: "There is nothing in any decision that has been made that will warrant the interference of a court of equity in a case like the present. Here the administration (as must be inferred from the petition) *is still in progress before the County Court*, which was then the court of probate jurisdiction, and that court is competent to hear and determine the controversy respecting the duty of the administrator in relation to the property mentioned in the petition, and *has exclusive original jurisdiction* of such question."

In the same case the learned Judge says: "The case of Clark and wife v. Henry, administrator, 9 Mo. R. 340, asserts the jurisdiction of a court of equity to determine a case of

alleged waste and mismanagement of an estate *after it had been finally settled in the County Court*, and where, of course, the jurisdiction of that court had been exhausted."

The case of Picot v. Biddle's administrator, one of the most recent cases, settles the law, that the Probate Court has exclusive jurisdiction *until a final settlement* to correct errors or frauds in the annual settlements of an administrator; and in reference to the anterior cases, Judge Bay says: "It will be observed that in all the Missouri cases a *final settlement had been made*, and as the suits were actions at law upon official bonds, the court could not treat the settlements otherwise than as conclusive upon the parties interested, and as having the force and effect of a judgment. The parties having neglected to appear at the final settlement, were necessarily remediless, except by bill in equity, to surcharge and falsify. To this extent do the Missouri decisions go, and we think no further."

If it be contended that the fourth charge in the bill was a general one of fraudulently purchasing the interest of an heir to an estate, without regard to the fact that the purchaser was administrator, I answer that then the securities were improperly made parties to such bill, and the bill was not only demurrable for that reason, but also for multifariousness. But if the charge is intended as an additional and aggravated charge of misdemeanor as administrator, it falls within the principles heretofore stated. Apart from this, upon what principle would a court of equity entertain a bill to cancel a note or receipt for money?—Kinney v. Mettler, 3 C. E. Green (N. J. R.).

2. The next question is, will the Federal court, sitting in Missouri, when called upon to interpret State laws in a case where the jurisdiction is given solely because of the non-citizenship of one of the parties, give a relief which the State courts could not?

I am perfectly aware that the chancery jurisdiction of the United States courts is the same throughout the Union; that this jurisdiction is conferred by the Judiciary Act and the Constitution; that what is equity and what is law does not,

with these courts, depend on the fluctuations of State laws or codes of practice; that their principles of decision, and rules of practice are drawn from English equity law, and not dependent on or affected by any State legislation.—U. S. v. Howland, 4 Whea. 108; Wickliffe v. Owings, 17 How. 47; Clark v. Smith, 13 Peters, 195; Bennett v. Butterworth, 11 How. 669; Boyle v. Zacharie, 6 Peters, 648; Nevis v. Scott, 13 How. 268.

The modes by which the Federal courts exercise their jurisdiction, their forms of procedure, their writs and processes, the machinery through which or by means of which their judgments, either in law or equity, are reached, are prescribed by the Constitution and laws of the United States, and such rules in conformity thereto as the courts themselves may prescribe, and not at all affected by State laws.

But the point in this case is, that upon the very principles of equity law borrowed from England and adopted here, this case ceases to be one of equitable cognizance (or legal cognizance either), just as well in the Federal courts as in the State courts, because of the peculiar structure of our probate system in Missouri, and because the nature and character of this system will be viewed in this court precisely as it is viewed in the courts of the State; that the State laws creating that system, and the adjudged construction of those laws, will be enforced in this tribunal just as they would be in a State tribunal, and not overturned or disregarded.

If this was not so, we should have the anomaly of a citizen of Virginia or New York having rights in Missouri, under Missouri laws, which the citizen of Missouri has not, thus not merely putting the former on an equality with the latter, but actually conferring advantages on the New York or Virginia citizen. Such a system would be anything else than harmonious. Moreover, it would overturn the whole system of probate jurisdiction in Missouri, so far as persons outside of that State are concerned; for if the United States courts, when called on to construe the Missouri laws concerning administration, &c., can entertain such a bill as the present, contrary to the received practice in this State, then

creditors' bills, legatees' bill, bills for marshalling assets, &c., which are common in other States and in England, although unknown in Missouri, would be equally admissible, and thus our system be completely overturned.

I cite the following authorities to show what has been the practice and principles of this court on this question: McKean v. Delancy's Lessee, 5 Cranch' 22; Polk's Lessee v. Wendall, 9 Cranch, 87; Elmendorff v. Taylor, 10 Whea., 152; McNeil v. Holbrook, 12 Peters, 84; McClurg v. Silliman, 3 Peters, 270; Sims v. Hundley, 3 Howard, 1; Hinde v. Vathers' Lessee, 5 Peters, 398; Ross v. Duval, 13 Peters, 45; McElmoyle v. Cohen, 13 Peters, 312; McDowell v. Peyton, 10 Whea. 454; Thatcher v. Powell, 6 Whea. 119; Harpending v. Dutch Church, 16 Peters, 455; Green v. Neal's Lessee, 6 Peters, 291; U. S. v. Morrison, 4 Peters, 124; Nesmith v. Sheldon, 7 How. 812; Henderson v. Griffin, 5 Peters, 151; Campbell, &c., v. Claudius, 1 Peters' C. C. R. 484; Ewing v. the City of St. Louis, 5 Wallace.

These decisions show not only that State laws are enforced by the Federal courts, but that the construction given by the State courts to them is also followed, even in cases where the State courts are thought to have given a construction to them not warranted by the acts.

The principle underlying all these decisions is very plainly stated by C. J. Marshall, in Elmendorff v. Taylor, 10 Whea. 152: "This court has uniformly professed its disposition, in cases depending on the law of a particular State, to adopt the construction which the courts of the State have given to these laws. This course is founded on the principle, supposed to be universally recognized, that the judicial department of every government, where such department exists, is the appropriate organ for construing the legislative acts of that government. Thus no court in the universe, which professed to be governed by principle, would, we presume, undertake to say that the courts of Great Britain or France, or of any other nation, had misunderstood their own statutes, and thereupon erect itself into a tribunal which should correct such misunderstanding. We receive the construction

given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction than to depart from the words of the statute. On this principle, the construction given by this court to the Constitution and laws of the United States is received by all as the true construction; and, on the same principle, the construction given by the courts of the several States to the legislative acts of those States is received as true, unless they come in conflict with the Constitution, laws, or treaties of the United States. If, then, this question is settled in Kentucky, we must suppose it to be rightly settled."

In Hinde v. Vathers, 5 Peters, 398, the court says: "There is no principle better established, and more uniformly adhered to in this court, than that the Circuit Court, in deciding on titles to real property in the different States, are bound to decide precisely *as the State courts ought to do.* The rules of property and of evidence, whether derived from the laws or adjudications of the judicial tribunals of the State, furnish the guide and rule of decision in those of the Union, in all cases to which they apply, where the Constitution, treaties, or statutes of the United States do not otherwise provide."

Judge Marshall said, in Polk's lessee v. Wendall, 9 Cranch, 87: "In cases *depending on the statutes of a State*, and more especially in those regarding titles to land, this court adopts the construction of the State where that construction is settled and can be ascertained."

In Harpending v. The Dutch Church, 16 Peters, 455, a State *limitation law* was enforced and construed as the courts of the State construed it.

In McKean v. Delancy's lessee, 5 Cranch, 22, this court yielded their judgment upon the construction of a State law, and conformed their action to what had been practically the construction in the State, C. J. Marshall declaring that infinite mischief would result from any other course.

In Green v. Neal's lessee, 6 Peters, 291, Mr. Justice Maclean examines this subject at length, and reviews the cases, and arrives at the same conclusion heretofore stated.

In Ross v. Duval, 13 Peters, 45, the court held that the

Virginia law of 1792, to regulate proceedings on judgments, was not a law affecting or regulating *process* merely, and as such not binding in the Federal courts, but a substantial limitation on judgments, and therefore binding in the United States courts under the 34th section of the Judiciary Act.

In McElmoyle v. Cohen, 13 Peters, 312, the limitation law of Georgia, to judgments in other States, was held to apply to suits in the United States courts as well as State courts, and it was enforced as a part of the *lex fori.*

In 5 Peters 151, the court extended the rule to the *construction of a will*, following the construction given in the courts of the State.

In Shelby v. Bacon et al., 10 How. 62, Mr. Justice Maclean says: "To establish this claim, as against the assignees, the complainant has a right to sue in the Circuit Court, which was established chiefly for the benefit of non-residents. Not that the claim should there be established by any novel principle of law or equity, but that his rights might be investigated free from any supposed local prejudice or unconstitutional legislation." In this case the State court had no *exclusive* jurisdiction, and it is admitted that this jurisdiction is conferred on the United States courts simply to avoid local prejudice, and that the United States courts would administer the same law in such cases that the State courts would.

In Campbell, B. & Co. v. Claudius, 1 Peters' C. C. R. 484, Judge Washington says: "The State laws, *as to rights*, furnish rules of decision for the Federal courts, under certain qualifications; but as to remedies, they have no binding force on those courts. This is every day's practice."

In Ewing v. City of St. Louis, 5 Wallace, the point in this case is expressly adjudicated: "A non-resident complainant can ask no greater relief in the courts of the United States than he could obtain were he to resort to the State courts. If in the latter courts equity would afford no relief, neither will it in the former."

The exclusive jurisdiction of the Probate Court of Missouri until a final settlement, is a matter not affecting the

chancery jurisdiction as a mere remedy, but in the nature of a right, just as much so as a statute of limitations. It is, in effect, a species of limitation law, and so the State tribunals regard it, for there is nothing in the equity law of Missouri different from the equity law of this court. The names are changed in Missouri, but the principles of equity law there are just as they were derived from the English equity law and administered there under a statutory enactment, using precisely the same terms that invest the courts of the United States with such jurisdiction, to-wit: "To proceed therein *according to the rules, usages and practice of courts of equity*" (see Act of 1835, § 15, Miller v. Woodward, 8 Mo. R. 172), and the courts of Missouri did not deny themselves the exercise of jurisdiction in cases like the present upon any express statutory restrictions peculiarly applicable to them, but upon the principles of the equity law as declared by the English chancery courts. The lame and imperfect jurisdiction of English ecclesiastical courts, which induced the chancery courts there to afford relief in such cases, having been, by the construction of our Probate Courts, converted into a full and complete power to furnish the redress which chancery courts, before that, alone could furnish, and this power having been *exclusively* invested in these probate tribunals, *temporarily at least*, our Missouri courts of equity refused to hear such cases any further; and so, I suppose, would the United States courts, sitting in Missouri, for the subject ceases to be a subject of equitable jurisdiction.—Miller v. Woodward, 8 Mo. R. 171.

In other words, the Missouri courts have so construed their State probate law, and the courts of the United States will follow that construction, in accordance with their established practice.

NAPTON, *for Appellant*.

Deeds

1 Stat. Laws Ky.

Moore 3 Jy Mar 838
15 B. Mon 68

1. Contract date, Monroe, Nov 1. 57, p.

Sale, Monroe atto. to Mulligan, Nov 25, 57, p 9

Report, Monroe